

ALTERNATIVE DISPUTE RESOLUTION

Both the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., and the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., require associations to provide a “fair and efficient” alternative to litigation for unit owners to resolve disputes between one another or with the association. The Condominium Act requires condominium associations to provide written notice of the availability of ADR as a condition of issuing a fine (N.J.S.A. 46:8B-15f.).

New Jersey courts have found that the requirements of the Planned Real Estate Development Full Disclosure Act that apply to ADR are intended to apply retroactively to all common interest communities regardless of when the community was created and the courts have also found that in the absence of a specific enunciation of public policy, that the provisions of the Condominium Act can be applied to common interest communities that are not condominiums. See, for example, Committee for a Better Twin Rivers v. Twin Rivers Homeowners’ Association 192 NJ 344, 929 A2D 1060; Mulligan v. Panther Valley 337 NJ Super 293, 766 A2d 1186; and Moore v. Radburn 2010 NJ Super upub Lexis 561. Therefore, the Department recommends that all common interest communities adopt as part of their ADR policy the provision of notice to a unit owner as a condition of issuing a fine.

The Association Regulation Unit of the New Jersey Department of Community Affairs has authority to require common interest communities to adopt alternate dispute resolution procedures. The agency does not provide ADR and does not address the substance of the dispute.

Although broadly construed, ADR has been found by New Jersey courts to be inapplicable to actions that challenge the board’s right to exercise certain powers or actions which are intended to serve the good of the association as a whole. A simple test of whether the dispute is ripe for ADR is whether an owner can assert that the association’s action imposes a special harm on the individual as opposed to affecting all owners. If this occurs ADR is applicable. Any allegations of fraud or other criminal conduct should be directed to the attention of the county prosecutor or other appropriate law enforcement agency for guidance. Please note that the State Attorney General does not act on individual complaints regarding allegations of board misconduct.

The applicability of ADR to a specific complaint requires a determination of whether it relates to a discretionary board action by the board or the management of the association or constitutes a violation of the association’s governing documents such as the master deed, bylaws or rules. Matters in which boards properly exercise discretion are subject to review through the democratic process (petitions, elections, etc.) while violations of governing documents or other legal requirements justify the use of the ADR procedure. Thus, if you proceed to ADR, you should be prepared to refer to specific laws or portions of the governing documents which you believe were violated.

There is no formal process required to request ADR but you should make it in writing, to the board, unless the procedure of your association provides otherwise. You should do so even if your association does not have a specific written ADR procedure or has one which does not appear to satisfy the “fair and efficient” criteria. In your request, state your complaint clearly and specifically request that you be provided ADR. If you do not have a copy of your association’s ADR procedure, you should request that the board or its agent supply you with one.

The laws we enforce do not prescribe the amount of time you should wait to expect a response from the board regarding your request to participate in an ADR. We recommend you wait a reasonable amount of time (at least 14 days) for a response from the board. If you do not receive a response you may contact this office in writing by completing a common interest community association complaint form. Please note, we do not require that associations file their ADR procedures with us and there is no requirement to receive Department approval before instituting a procedure.

Each association is authorized to design the ADR procedure which it feels best satisfies the needs of its owners. Procedures may range from mediation (informal recommendations) rendered by designated neighbors to non-binding arbitration (formal decisions) in a court like setting with numerous formalities overseen by a trained individual. ADR providers may be appointed by a board but the association should have an independent means of selection. Whoever is selected must be impartial.

ADR is intended as an alternative to litigation, thus it is not necessary to have legal counsel. However, you may, if you choose, be represented. If you choose to be represented, you are responsible for the cost of the representation. Otherwise, in condominiums, any costs in providing ADR are common expenses pursuant to N.J.S.A. 46:8B-14. In other types of associations, there may be mandatory charges on the requesting party to cover the costs of ADR.

Although there is no standard ADR procedure, there is one fundamental rule; the board cannot be the ADR provider. Thus, neither the board nor any member can sit as or with the ADR panel. The board or its members or agent or representative can appear and present the board's position. The law provides that either party may appeal to court following an ADR procedure. The board cannot appeal a decision to itself. The Department of Community Affairs is not empowered to overturn or even modify the outcome of an ADR proceeding.

Please note that ADR is not automatically binding on boards. Thus, if a board fails to cooperate with a recommendation or arbitration decision against it, you must enforce your right in court. Additionally, ADR is not a means to secure an order to stop a board from taking action or to force a board to act. These can only be secured through appropriate court proceedings. Moreover, ADR is not the means to obtain monetary damages against the association.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us (to obtain statute, scroll down on left side of page to "Laws and Constitution", click on statutes, enter full name of statute in search box). The N.J. Administrative Code can also be found on line at www.michie.com/NJ.